

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JEREMY D. JOHNSON, et. al.,

Defendants.

Case No. 2:10-cv-02203-MMD-GWF

ORDER

(Plf's Motion to Strike – dkt. no. 1285;
Relief Defs' Emergency Motion – dkt. no.
1289; Defs' Emergency Motion to Extend
Time – dkt. no. 1295; Defs' Motion for
Joinder – dkt. no. 1298)

This Order addresses the briefing schedule on dispositive motions to resolve issues raised in three pending motions: (1) Plaintiff Federal Trade Commission's Motion to Strike Relief Defendants' Motion for Partial Summary Judgment ("Motion to Strike") (dkt. no. 1285); (2) Relief Defendants' Emergency Motion Regarding Dispositive Motion Deadline and Response in Opposition to FTC's Motion to Strike ("Emergency Motion") (dkt. no. 1289); and (3) Defendants' Emergency Motion to Extend Time ("Motion for Extension") and Joinder to the same (dkt. nos. 1295 and 1298).

Plaintiff argues that Relief Defendants' Motion for Partial Summary Judgment ("MPSJ") should be struck because it was filed after the November 26, 2013, deadline for filing dispositive motions. Relief Defendants' Emergency Motion asks the Court to find that the MPSJ was timely or, in the alternative, find good cause and excusable neglect for a three-day extension of the deadline. (Dkt. no. 1289.) In light of Relief Defendants' request for emergency relief, the Court issued an expedited briefing schedule ordering Plaintiff to file any response to Relief Defendants' Emergency Motion by December 5,

1 2013. (Dkt. no. 1292.) Plaintiff timely filed such response. (Dkt. no. 1297.) Relief
2 Defendants were ordered to file any reply by December 6, 2013. (Dkt. no. 1292.) Relief
3 Defendants did not file such reply until December 8, 2013, despite their request for
4 emergency ruling by the Court. (Dkt. no. 1300.)

5 Relief Defendants' failure to contest the November 26, 2013, deadline until after
6 filing a dispositive motion three days late is, at best, an unnecessary inconvenience to
7 the Court and Plaintiff. The Court entered an order on October 3, 2013, that explicitly
8 mentions "the current dispositive motion deadline of November 26, 2013." (See dkt. no.
9 1194.) That order denied Plaintiff's Emergency Motion for Stay, which also mentioned
10 the November 26, 2013, deadline. (Dkt. no. 1180.) Relief Defendants did not raise the
11 alleged inaccuracy of the deadline in their opposition, nor had they raised it with the
12 Court or Plaintiff prior to Plaintiff's Motion to Strike. Relief Defendants have an obligation
13 to read orders issued by the Court and to raise any objections in a timely manner. In
14 addition to filing their MPSJ three (3) days after the deadline identified by the Court in its
15 October 3, 2013, order, Relief Defendants filed their reply in further support of their
16 Emergency Motion two (2) days after the deadline set by the Court in its December 5,
17 2013, minute order. Relief Defendants continue to suggest to the Court that they either
18 do not read or do not abide by the deadlines set in the Court's orders.

19 Even so, Relief Defendants ask the Court to find good cause and excusable
20 neglect for an extension of the dispositive motion deadline. Federal Rule of Civil
21 Procedure 6(b)(1)(B) provides that the Court may, for good cause, extend the time "on
22 motion made after the time has expired if the party failed to act because of excusable
23 neglect." *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*
24 set forth a four-part balancing test for considering whether there has been "excusable
25 neglect": (1) the danger of prejudice to the non-moving party; (2) the length of the delay
26 and its potential impact on judicial proceedings; (3) the reason for the delay, including
27 whether it was within the reasonable control of the movant; and (4) whether the movant
28 acted in good faith. 507 U.S. 380, 395 (1993). While *Pioneer* involved the Federal Rule

1 of Bankruptcy Procedure 9006(b)(1), the Court made clear that the test would also apply
2 to Fed. R. Civ. P. 6(b)(1)(B). *Id.* at 391-92, 395; *see also Mario v. United Parcel Serv.*,
3 453 F. App'x 682, 684 (9th Cir.2011). The weighing of Pioneer's equitable factors is
4 within the discretion of the district court. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th
5 Cir.2004).

6 The Court finds sufficient excusable neglect to extend the deadline for three (3)
7 days. The Court bases its decision on the fact that the Relief Defendants filed the MPSJ
8 only three (3) days late and there is strong potential for prejudice to Relief Defendants
9 should the Court strike their MPSJ. Further, the Court is not convinced that Plaintiff has
10 been prejudiced by Relief Defendants' delay. Plaintiff argues that Relief Defendants
11 gained a tactical advantage in being able to see Plaintiff's Motions for Summary
12 Judgment (dkt. nos. 1235, 1278) before filing the MPSJ. Even accepting that as true, the
13 argument is unconvincing. Deadlines are not set by the Court so that parties may gain
14 strategic advantage by filing on the last day. They are set so that the Court may resolve
15 cases in a fair and efficient manner. Given the short length of the delay and the
16 importance of addressing the Relief Defendants' dispositive arguments, the Court finds
17 good cause to avoid striking the MPSJ by extending the deadline.

18 Defendants' Motion for Extension asks for a thirty-day extension to allow
19 Defendants adequate time to respond to Plaintiff's large and complex Motions for
20 Summary Judgment. (Dkt. no. 1295.) Plaintiffs ask that, if the Court does allow
21 Defendants additional time, the Court also grant an extension for Plaintiff to file reply
22 briefs in further support of its Motions for Summary Judgment in the amount of additional
23 days granted to Defendants. (Dkt. no. 1301.) In light of the Motion for Extension,
24 Plaintiff's response, the foregoing and Plaintiff's request to have the same reply
25 deadlines for its Motions for Summary Judgment and Relief Defendants' MPSJ, the
26 Court finds good cause to enter the following briefing schedule:

- 27 • Responses to Plaintiff's Motions for Summary Judgment (dkt. nos. 1235,
28 1278) are due by January 19, 2014.

- Responses to Relief Defendants' Motion for Partial Summary Judgment (dkt. no. 1284) are due by January 19, 2014.
- Reply briefs in further support of Plaintiff's Motions for Summary Judgment (dkt. nos. 1235, 1278) are due by March 4, 2014.
- Reply briefs in further support of Relief Defendants' Motion for Partial Summary Judgment (dkt. no. 1284) are due by March 4, 2014.

Instead of filing separate reply briefs in further support of its Motions for Summary Judgment, Plaintiff may opt to file an omnibus brief responding to all opposition briefs with the same deadline of March 4, 2014.

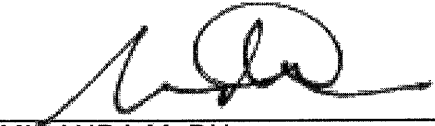
It is hereby ordered that Plaintiff's Motion to Strike (dkt. no. 1285) is denied.

It is further ordered that Relief Defendants' Emergency Motion (dkt. no. 1289) is granted in part and denied in part. The deadline for dispositive motions was November 26, 2013. Good cause and excusable neglect appearing, the Court extends the deadline to November 29, 2013.

It is further ordered that Defendants' Emergency Motion to Extend Time (dkt. no. 1295) is granted. A briefing schedule is set consistent with this Order.

It is further ordered that Defendants' Motion for Joinder (dkt. no. 1298) is granted.

DATED THIS 10th day of December 2013.


MIRANDA M. DU
UNITED STATES DISTRICT JUDGE